



Ordinance No. 23 20 18

ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE - SAFETY TO ENTER INTO A LEASE AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS, HAMILTON COUNTY, OHIO AND THE CITY OF NORWOOD, ON BEHALF OF THE NORWOOD POLICE DEPARTMENT, FOR MOBILE DATA COMPUTERS (MDC'S) AND DOCKING STATIONS, AND DECLARING AN EMERGENCY

WHEREAS, the Mobile Data Computers ("MDC's") and Docking Stations currently used by the City of Norwood Police Division are at the end of their useful lives and require replacement; and

WHEREAS, Council desires to authorize the Service-Safety Director to enter an equipment lease agreement substantially similar to the attached Lease Agreement now, therefore,

BE IT ORDAINED by the Council of the City of Norwood, State of Ohio, that:

SECTION 1. The Council of the City of Norwood has determined that the City needs to acquire the Equipment and other personal property described in the Lease Agreement between the City of Norwood and the Board of County Commissioners, Hamilton County, Ohio attached as Exhibit A; and

SECTION 2. The Council of the City of Norwood has determined that the Lease Agreement, substantially similar to the attached Exhibit A, is in the best interests of the City to acquire such Equipment and other personal property, and the Director of Public Service-Safety is hereby authorized to enter into a contract in accordance with specifications filed in the office of the Director of Public Service-Safety and/or the Auditor's Office, with the Board of County Commissioners, Hamilton County, Ohio for the lease of Mobile Data Computers ("MDC's") and Docking Stations, described in "Exhibit A", for use by the Norwood Police Division. The costs of the Mobile Data Computers ("MDC's") and Docking Stations are as follows:

13 Mobile Data Computer's (MDC'S)	\$24,355.50
13 Docking Stations	<u>\$ 4,920.50</u>
TOTAL	\$29,276.00

SECTION 3. The signatures referenced in the Lease-Purchase Agreement from the designated individuals for the City of Norwood evidence the adoption by Council of this Ordinance.

SECTION 4: The City Auditor is authorized to draw, and the City Treasurer is authorized to pay, warrants in the amounts and according to the schedule, as outlined in the attached "Exhibit A," for the lease of the aforementioned Mobile Data Computers ("MDC's") and Docking Stations for the foregoing purposes out of **GENERAL FUND 01**, beginning in 2018.

SECTION 5. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and general welfare and shall take effect and be in force immediately upon its passage. The reason for said emergency is the need to acquire these MDCs and Docking Stations as soon as possible.

PASSED August 14, 2018
Date

Donna M. Laake
Donna M. Laake
President of Council

ATTEST:

Joseph S. Geers, the duly appointed Clerk of Council, attests that this ordinance was passed at a special meeting of Norwood City Council on the 14th day of August, 2018 in compliance with the rules of Norwood City Council and the laws of the State of Ohio. The foregoing ordinance was submitted to the Mayor of the City of Norwood, Ohio for his signature on the 15 day of August, 2018.

Joseph S. Geers
Joseph S. Geers
Clerk of Council

APPROVED 8/15/18
Date

Thomas F. Williams
Thomas F. Williams
Mayor

CERTIFICATION OF PUBLICATION:

Joseph S. Geers, the duly appointed Clerk of Council, attests that this Ordinance was published in the _____ on _____ and _____.
(Name of Newspaper) (date) (date)

Joseph S. Geers
Joseph S. Geers
Clerk of Council

ORDINANCE READINGS

1st Reading _____
Date

2nd Reading _____
Date

3rd Reading _____
Date

All 3 Readings 8/14/18
Date

Tabled _____
Date

Vetoed _____
Date

LEASE AGREEMENT

This **LEASE AGREEMENT** (“Agreement”) is entered into on this day of _____, 2018, between the Board of County Commissioners, Hamilton County, Ohio (“County”) and the City of Norwood, Ohio on behalf of Norwood Police Department (“Receiving Agency”) to memorialize the use of CLEAR funding for Mobile Data Computers (“MDCs”) and Docking Stations being transferred to law enforcement agencies located in Hamilton County in order to improve access to data and information.

WITNESSETH:

WHEREAS, the Board of County Commissioners, Hamilton County, Ohio on February 24, 1982, adopted a Resolution declaring it necessary to levy a tax in excess of the ten mill limitation, pursuant to §5705.191, in order to supplement General Fund appropriations for the purpose of providing funds for the operation of a County-wide Computerized Police Information Center in Hamilton County, Ohio (“CLEAR Levy”); and

WHEREAS, the Resolution was amended, nunc pro tunc on February 24, 1982, in order to correct certain clerical errors; and

WHEREAS, the CLEAR Levy is to be in effect for a continuing period of time, levied on the 1982 and succeeding tax duplicates; and

WHEREAS, in September of 2005, the County entered into an agreement with the City of Cincinnati (“City”) for the management, operation and support of the county-wide law enforcement applied regionally (“CLEAR”) System; and

WHEREAS, as a result of the agreement with the City, the City currently acts as the Operating Agent for Project CLEAR; and

WHEREAS, a Board of Advisors, comprised of representatives from various law enforcement agencies located in Hamilton County (“CLEAR Board”), currently reviews and prioritizes certain projects in which CLEAR Levy funds are used; and

WHEREAS, on February 1, 2018, the County entered into a contract with Upstate Wholesale Supply Company, Inc., d/b/a Brite Computers, for the purchase of rugged laptops

with Windows 10 Professional 64 bit installed, vehicle docking stations, asset tags and logos, bios configuration as well as other consumables all as more particularly described in the County's Request For Proposals - 070-16 : and

WHEREAS, it is anticipated that MDCs and Docking Stations will be purchased for certain law enforcement agencies located in Hamilton County, Ohio and that the County will use the funds raised by the CLEAR Levy to pay for such purchase(s); and

WHEREAS, it is expected that approximately Forty-Two law enforcement agencies will receive MDCs and Docking Stations subject to the terms and conditions of this Agreement; and

WHEREAS, the purchase, distribution and oversight of such MDCs and Docking Stations will be carried out by the CLEAR Project Manager, who is an employee of the City.

NOW THEREFORE, incorporating these Premises, and in consideration of the mutual promises, terms and conditions contained herein, the Parties agree as follows:

1. LEASE OF EQUIPMENT

County hereby leases to Receiving Agency, and Receiving Agency hereby leases from County, the MDCs and Docking Stations that are described on the Asset Transfer Form, attached hereto and incorporated herein as Exhibit A. This form may be updated from time to time as the MDCs and Docking Stations are deployed to the Receiving Agency.

2. TERM

The term of this Agreement shall commence on _____ shall expire on the earlier of: a) the date the MDCs and Docking Stations are surrendered (as described in Section 19); or b) _____ ("Initial Term"). This Agreement may be extended at the option of the County from year to year upon the expiration of the Initial Term, on the same terms and conditions set forth in this Agreement.

3. PAYMENT

The amount to be paid by the Receiving Agency for the lease of the MDCs and Rugged Laptops shall be the one time cost-share sum of \$29,276.00. The payment shall be made by the Receiving Agency within thirty (30) calendar days after the Receiving Agency's receipt of an invoice for the same. This payment is non-refundable upon termination, surrender or expiration of this Agreement.

4. USE

MDCs and related Docking Stations shall be used by the Receiving Agency properly and in a manner contemplated by the CLEAR Board to ensure that such equipment will be usable for its useful life. Receiving Agency agrees to comply with all laws, ordinances, rules, regulations and policies relating to the use, operation or maintenance of the MDCs and Docking Stations, including but not limited to the RCIC Computer Usage Policy and any rules, policies or procedures related to the interfaced systems to which the MDCs have access.

5. RESPONSIBILITIES AND OBLIGATIONS OF THE RECEIVING AGENCY

- A. Receiving Agency shall install MDCs and Docking Stations, at its sole cost and expense, in accordance with both the manufacturer's instructions and specifications as set forth in the *CLEAR MDC Installation Specifications*. A copy of the *CLEAR MDC Installation Specifications* and the manufacturer's instructions and specifications is attached as Exhibit B-1 and B-2, respectively and incorporated by reference herein. Receiving Agency understands and agrees that these instructions and specifications may be amended and modified from time to time without the need to amend this Agreement. Receiving Agency is responsible for obtaining any updated or amended instructions and specifications.
- B. Receiving Agency may transfer and reinstall MDCs and Docking Stations from one police vehicle to another police vehicle in its fleet. Transfer and reinstallation from one police vehicle into another shall be done at Receiving Agencies sole cost and expense. All reinstallations shall be performed in accordance with this Agreement.
- C. At Receiving Agency's sole cost and expense, Receiving Agency shall fully maintain the equipment set forth on Exhibit A, while in its possession and under its control. The equipment must be maintained in good and satisfactory condition and in accordance with the manufacturer's and the CLEAR Board's specifications. If any repairs are necessitated by Receiving Agency's improper use of the MDC or Docking Station or negligence in its use, Receiving Agency will bear the sole cost and expense of such repairs.

- D. Receiving Agency shall obtain and pay for all maintenance and repair costs not covered by a warranty. The County will have no liability whatsoever for any improper or omitted repair or maintenance.
- E. Receiving Agency shall not cause or permit any hardware or module modification until it has received written consent from the CLEAR Project Manager. In order for PacketCluster (MobileCop) and CAD functionality to work in a reliable manner, Receiving Agency shall not permit any changes or modifications to the MDC naming convention. Receiving Agency shall not make any additions, alterations, or improvements to the MDC (including software) or Docking Stations without prior written consent of the CLEAR Board. Unless otherwise agreed to by the parties, any approved additions, alterations, or improvements are subject to the terms and conditions of this Agreement.
- F. Notwithstanding any consent by the CLEAR Project Manager or the CLEAR Board, Receiving Agency is responsible for ensuring that any third-party software that it installs on a MDC does not have any negative impact or performance side effects on the reliable operation of PacketCluster (MobileCop) or any CLEAR Board provided software. It is the Receiving Agency's sole responsibility to research and test such third-party software. Receiving Agency agrees that it will comply with the licensing requirements of any third-party software installed on the MDC.
- F. Receiving Agency is responsible for ensuring compliance with the LEADS/NCIC CJIS Security Policies. The CLEAR Board will enforce policies from the Antivirus server and the Anyconnect firewall but will not be responsible if Receiving Agency circumvents these safeguards. Receiving Agency will be financially responsible for any damages or expenses whatsoever arising from a Receiving Agency's circumvention of the safeguards described above.
- G. Receiving Agency understands and agrees that all MDCs are configured to utilize the internet connection approved or provided by the CLEAR Board.
- H. Receiving Agency agrees that it will not add the MDC to a domain (Active Directory or any other domain).

- I. All MDCs must utilize the CLEAR Antivirus server and standard policies including but not limited to firewall, antivirus, update, and scanning policies.

6. RESPONSIBILITIES OF CLEAR

The CLEAR Project Manager is responsible for the software installed on the standard CLEAR image. Any license for the software installed by CLEAR Project Manager on a MDC cannot be used on any other device. Any software installed by CLEAR Project Manager on a MDC can only be used for law enforcement purposes only.

7. INVENTORY

The CLEAR Board shall maintain an inventory of MDCs and Docking Stations along with the current location of such equipment. Any change of location of the equipment must be reported to the CLEAR Project Manager. Upon CLEAR Project Manager's request, Receiving Agency must submit a complete and accurate inventory of all MDCs covered by this Agreement. The inventory shall be submitted in the manner requested by the CLEAR Project Manager, within thirty (30) calendar days from the date of such request. The inventory must include at a minimum the identification of the Receiving Agency, Vehicle Number, MDC Serial Number and Inventory/Asset Number.

8. RISK OF LOSS AND DAMAGE

Receiving Agency shall develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Receiving Agency shall also assume full risk of loss or damage to the equipment. To protect against such loss or damage, such agency must procure and maintain insurance, at its expense, unless it is self-insured under the laws of R.C 2744.081. Any loss, damage, or theft shall be documented by Receiving Agency. Receiving Agency shall immediately notify CLEAR Project Manager of any accident or event of loss or damage involving a MDC or a Docking Station.

9. INSPECTION OF EQUIPMENT

Receiving Agency shall permit inspection of the MDCs and Docking Stations. Advance notice of such inspection shall be in the discretion of the County or the CLEAR Board.

10. RESERVED

11. DATA

Receiving Agency is solely responsible for any data that it stores on an MDC. Receiving Agency understands that any MDC repair will result in the loss of Receiving Agency's data as a fresh standard MDC image will be placed on the MDC during the repair process. In no event will County be liable for any lost data or the recovery of the same.

12. DATA USAGE

The MDCs are equipped with an internal 4G GOBI modem and will be configured to use the internal modem and work with various broadband carriers. Receiving Agency will have access to broadband carriers as determined by the CLEAR Board. While the CLEAR Board will use its best efforts to offer unlimited data plans, any data overage fees and data plan costs may be passed on to Receiving Agency.

13. BATTERY REPLACEMENT

Receiving Agency agrees to replace the MDC batteries as directed by the CLEAR Project Manager. Receiving Agency understands and agrees that battery replacements are planned for Year 2 and Year 4 of the MDC life and will be at no additional cost to Receiving Agency.

14. REPAIRS AND MAINTENANCE

A. MDC Repair and Maintenance During Warranty Period

There is a Getac Five (5) Year Bumper-to Bumper Warranty ("Getac Warranty") for all MDCs transferred to the Receiving Agency pursuant to this Agreement. The terms and conditions of the Getac Warranty are attached hereto as Exhibit C, attached hereto and incorporated herein by reference. Unless agreed to by the CLEAR Project Manager in advance in writing, all Getac Warranty claims shall be handled by the CLEAR Project Manager or designee. Any repairs not covered by the Getac Warranty shall be at the sole cost and expense of the Receiving Agency. The CLEAR Project Manager will use best efforts to ensure that repairs receive full warranty coverage. The procedure for obtaining warranty claim repairs is set forth in Exhibit D, attached hereto and incorporated herein by reference. Such procedure can be modified or amended by the CLEAR Board without a need for an amendment to this Agreement.

B. MDC Repair and Maintenance Post Warranty Period

Upon expiration of the Getac Warranty, the Receiving Agency shall be responsible for all maintenance and repairs. The CLEAR Board may provide certain repair and maintenance options for Receiving Agency, but in no event will the County be financially responsible for any post warranty period issues.

C. Docking Station Repair and Maintenance During Warranty Period

There is a Gamber-Johnson Extended Warranty Plan (“Gamber-Johnson Warranty”) for all Docking Stations transferred to the Receiving Agency pursuant to this Agreement. The terms and conditions of the Gamber-Johnson Warranty are attached hereto as Exhibit E, attached hereto and incorporated herein by reference. Unless agreed to by the CLEAR Project Manager in advance in writing, all Gamber-Johnson claims shall be handled by Receiving Agency. Any repairs not covered by the Gamber-Johnson Warranty shall be at the sole cost and expense of Receiving Agency. The CLEAR Project Manager will use best efforts to ensure that repairs receive full warranty coverage. The procedure for obtaining warranty claim repairs is set forth in Exhibit F, attached hereto and incorporated herein by reference. Such procedure can be modified or amended by the CLEAR Board without a need for an amendment to this Agreement.

D. Docking Station Repair and Maintenance Post Warranty Period

Upon expiration of the Gamber-Johnson Warranty, Receiving Agency shall be responsible for all maintenance and repairs. The CLEAR Board may provide certain repair and maintenance options for Receiving Agency, but in no event will the County be financially responsible for any post warranty period issues.

15. LIMITATION OF WARRANTIES

EXCEPT AS, AND ONLY TO THE EXTENT, EXPRESSLY PROVIDED IN THIS AGREEMENT, THE MDC, DOCKING STATIONS AND PARTS THEREOF ARE PROVIDED “AS IS”. COUNTY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES AND IN PARTICULAR DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND AGAINST INFRINGEMENT.

16. ASSIGNMENT

Receiving Agency shall not, without the prior written consent of the County, assign, delegate or transfer this Agreement, MDCs, Docking Stations or any part or interest; or offer to sell, sublet, or lend the MDC(s), Docking Station(s), or any part, or permit the MDC(s), Docking Station(s) or any part, to be used by anyone other than Receiving Agency or the Receiving Agency's employees.

17. DEFAULT

County has the right to terminate this Agreement on written notice to the Receiving Agency if Receiving Agency materially fails to perform any of its obligations under this Agreement, which failure has not been corrected within fifteen (15) calendar days after receipt of written notice of the failure from County. Upon any such termination by County, Receiving Agency agrees to promptly return to County the MDC(s) and Docking Station(s) in accordance with Section 19 herein. Any termination under this Section shall not affect County's ability to pursue any other remedy existing at law or in equity for such default.

18. TERMINATION

Either party may terminate this Agreement, for its convenience, by providing written notice of termination thirty (30) calendar days prior to the effective termination date. On termination of this Agreement, Receiving Agency shall promptly return to the County the MDC(s) and Docking Station(s) in accordance with Section 19 herein.

19. SURRENDER

A. Receiving Agency agrees that at the expiration or earlier termination of this Agreement, Receiving Agency shall return the MDC and Docking Station to the County in the same condition in which it was received by Receiving Agency, except for reasonable wear and tear resulting from permitted use. Unless otherwise agreed upon, the MDC(s) and Docking Station(s) shall be returned to the County within thirty (30) calendar days of the expiration or earlier termination of this Agreement. If Receiving Agency fails to return the MDC(s) and Docking Station as provided herein, County will assess to Receiving Agency the costs incurred to replace the MDC(s) and Docking Station(s) or restore the MDC(s) and Docking Station(s) to a functional and operational condition.

- B. Receiving Agency may surrender an excess or unneeded MDC(s) and Docking Station(s) to County at any time, requesting in writing that the MDC(s) and Docking Station(s) be removed from the terms and conditions of this Agreement and the inventory records. Such surrendered MDC(s) and Docking Station(s) must be in the same condition in which they was received by the Receiving Agency, except for reasonable wear and tear resulting from permitted use. If the MDC(s) and Docking Station(s) are not returned as provided herein, County will assess to Receiving Agency the costs incurred to replace or restore the MDC(s) and Docking Station(s) to a functional and operational condition. A voluntary surrender of a MDC and Docking Station shall be accomplished by a written document between the parties and will be considered as part of this Agreement without the need for an amendment.

20. LIMITATIONS OF LIABILITY

A. General

Each party shall be responsible for its own acts and omissions and those of its employees and agents. In no event shall the County have any liability for any issues arising from the use, repair, maintenance or the failure to use, repair to maintain the MDCs and Docking Stations

B. Limitation and Disclaimer

COUNTY'S MAXIMUM LIABILITY FOR DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY, SHALL NOT EXCEED THE AMOUNT PAID BY RECEIVING AGENCY UNDER THIS AGREEMENT. IN NO EVENT SHALL COUNTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES UNDER ANY CIRCUMSTANCES EVEN IF COUNTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THESE DAMAGES.

C. Service Disclaimer

County shall not be liable for any claim, loss, damage or expense, either direct or indirect, incurred, made or suffered by Receiving Agency in connection with or in any way arising out of the furnishing, performance or use of the MDC or Docking Station or any disruption of service of the same.

21. NOTICES

All notices to be given hereunder shall be in writing and either i) personally delivered; ii) sent by registered or certified mail, return receipt requested, postage prepaid; iii) by facsimile with a written confirmation notice as provided herein or iv) via a nationally recognized private express mail courier service to the addresses below or to such other address as so notified in writing by a party. If such notice is provided by personal delivery, service shall be deemed complete upon such delivery. If such notice is by fax, certified or registered mail, service shall be deemed complete upon mailing.

All notices sent to the Receiving Agency should be sent to:

Email: _____

All notices sent to County should be sent to:

Board of County Commissioners, Hamilton County, Ohio
Attn: County Administrator
138 East Court Street, Room 603
Cincinnati, Ohio 45202
Email: HCAdmin@hamilton-co.org

With a copy to:

Information Technology Manager, CLEAR/RCIC
805 Central Ave., Suite 320
Cincinnati, Ohio 45202
Email: poneill@clear-rcic.org

22. ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between the parties. Any prior understandings or representations of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

23. MODIFICATION OF AGREEMENT

Any modification or addendum to this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each.

24. FAILURE TO INSIST ON STRICT COMPLIANCE

County's failure to insist in any instance on strict performance by Receiving Agency of any provision in this Agreement shall not be construed as a permanent waiver of such provision, or as a waiver of any other provision of this Agreement.

25. SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected by it.

26. SECTION HEADINGS

The section headings contained in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit, or describe the scope or intent of this Agreement and do not in any way affect its provisions.

27. MISCELLANEOUS PROVISIONS

- A. This Agreement in no way restricts the Parties from participating with other public or private organizations and individuals in similar agreements. All Parties recognize the importance of cooperation and partnership with organizations and institutions of mutual interest

- B. This Agreement is made and entered into in the State of Ohio and shall be governed and construed in accordance with the laws of Ohio.

The terms of this Agreement are hereby agreed to by both parties, as shown by the signatures of representatives of each.

**BOARD OF COUNTY COMMISSIONERS,
HAMILTON COUNTY, OHIO**

RECEIVING AGENCY

By: _____
(Signature)

By: _____
(Signature)

Name: _____

Name: _____

Title: _____

Title _____

Date: _____

Date: _____

Approved as to form:

By: _____.

Assistant Prosecuting Attorney
Hamilton County, Ohio

**EXHIBIT A
Asset Transfer Form**

Name of Receiving Agency: City of Norwood, Ohio

Description	Model	Serial Number	Location	Comments
MDC laptop		Will be supplied at the end of deployment		13 MDC laptops
Dock		Will be supplied at the end of deployment		13 Docks
				0 Spare MDCs
				0 Additional MDCs
				0 Additional Docks

I hereby certify that the equipment described above that is being transferred pursuant to this Asset Transfer Form is being used for and will continue to be used for law enforcement purposes consistent with and in compliance with the terms and conditions of the Lease Agreement dated _____ that has been executed with the Board of County Commissioners, Hamilton County, Ohio governing the lease of the Mobile Data Computers and Docking Stations.

RECEIVING AGENCY

By: _____

(Signature)

Name: _____

Title: _____

Date: _____